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IN THE
COURT OF APPEALS OF INDIANA

PABLO GARCIA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0611-CR-1032
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Jane Magnus-Stinson, Judge
Cause No. 49G06-0602-FA-29938

September 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Pablo Garcia ("Garcia") appeals his convictions for four counts of Child Molestation,[1] one as a Class A felony and three as Class C felonies. We affirm.

Issue[2]

Garcia raises three issues on appeal. We only address the issue that is not waived: Whether there is sufficient evidence to support his convictions.

Facts and Procedural History

Starting in April of 2005 and through early 2006, Garcia was living with his wife, his son, C.G., and his stepdaughter, K.P., in Indianapolis. Before coming to the United States to live with her mother and stepfather, K.P. lived most of her life with her grandfather in El Salvador. Garcia's birth date is November 25, 1973.

After K.P. came to live in Indianapolis, Garcia began inappropriately touching her. K.P. was seven years old when these incidents started. K.P. told Linnette Garcia ("Linnette"), a Forensic Child Interviewer of the Child Advocacy Center, that Garcia had touched K.P. on her private parts more than once and had inserted his finger into her vagina. K.P. indicated that it hurt when Garcia did this. On another occasion, Garcia and K.P. were sitting on a bed. Garcia sat K.P. on top of his lap with his penis between them and was

[1] Ind. Code § 35-42-4-3.

[2] Garcia also challenged the child victims' competency to testify and the admission of their out-of-court statements made to a Forensic Child Interviewer. However, Garcia failed to lodge a timely objection to the admissibility of this evidence either after the competency ruling or during the relevant testimony at trial. A timely objection should be made to any improprieties that may occur during the course of a trial so that the trial judge may be informed and may take effective action to remedy the complained of error. Sandifur v. State, 815 N.E.2d 1042, 1045-46 (Ind. Ct. App. 2004), trans. denied. Failure to object at trial to the admission

moving really fast. White stuff came out of Garcia's penis, which Garcia cleaned up with a towel. Another incident occurred where Garcia was lying on top of K.P., and Garcia inserted his penis into K.P.'s vagina. "A white thing" came out of Garcia's penis and went into K.P. Trial Transcript at 157. K.P. was eight when the last incident occurred.

As for C.G., Garcia touched C.G.'s penis with his penis. When this happened, C.G. was lying down on the bed, and Garcia was lying on top of him, hugging C.G. Garcia began to move back and forth. C.G. said that Garcia's penis, which C.G. referred to as a "peanut", was hard and that it hurt him.

In February of 2006, K.P. told her teacher and school principal about what Garcia was doing to her. C.G. also informed his teacher as to what Garcia had done to him. C.G. said the incident occurred a few days before he spoke with his teacher about it. After the children spoke with their school's social worker about the incidents, the school social worker contacted Child Protective Services. On the afternoon of February 16, 2006, Linnette from the Child Advocacy Center interviewed the children about their encounters with Garcia.

The State charged Garcia with three counts of Class A felony child molestation and three counts of Class C felony child molestation. Two of the charges concerned acts done by Garcia to C.G., one as a Class A felony and the other a Class C felony. The rest of the charges pertained to incidents involving K.P. Upon the State's request, the trial court held a child hearsay hearing on September 1, 2006, to determine the children's competency as witnesses and whether their statements to Linnette were admissible evidence. Based on the

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of evidence results in a waiver of the issue on appeal. Jones v. State, 800 N.E.2d 624, 629 (Ind. Ct. App. 2003). Due to his failure to object, Garcia has waived these issues for review.

evidence presented, the trial court ruled that K.P. and C.G. were competent to testify at trial and their statements to Linnette were admissible.

The jury found Garcia guilty of the Class A felony in Count I, sexual intercourse with K.P., and of the Class C felonies in Counts IV-VI, two incidents of fondling K.P. and one incident of fondling C.G. Garcia was found not guilty on the two remaining Class A felony charges. The trial court sentenced Garcia to thirty years for Count I and four years for each of the Class C felony convictions in Counts IV-VI. The sentence for Count VI was ordered to be served consecutive to Count I while the other two four-year sentences were to be served concurrently for an aggregate sentence of thirty-four years imprisonment. Garcia now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

Our Supreme Court has recently summarized the standard of review to be utilized in assessing claims of insufficient evidence:

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder *could* find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations and citations omitted)

(emphasis in original).

Garcia asserts that there is insufficient evidence to support his convictions. The only basis upon which Garcia makes this challenge is his claim that the State failed to demonstrate the time and place these sexual activities purportedly occurred.

Indiana Code Section 35-34-1-2(a)(5) requires that an information "[state] the date of the offense with sufficient particularity to show that the offense was committed within the period of limitations applicable to that offense." The State is also required to state the time of the offense if time is of the essence of the offense. I.C. § 35-34-1-2(a)(6) (emphasis added). However, where time is not of the essence to the crime, the State may prove the commission at any time within the statutory period of limitations, rather than being confined to proving commission of the crime on the date specified in the indictment or information. Love v. State, 761 N.E.2d 806, 809 (Ind. 2002). Time is not of the essence in child molesting cases unless the circumstances in the case are where the victim's age at the time of the offense falls at or near the dividing line between classes of felonies. Id. at 103.

Here, neither of the victims' ages falls at or near the dividing line between the classes of felonies as K.P. was eight and C.G. was seven at the time of the trial. The crime of child molesting, as defined in Indiana Code Section 35-42-4-3, requires the child victim be under the age of fourteen. Therefore, time is not of the essence in this case, and the State need not prove the exact time at which the act occurred but only that the offenses occurred within the statutory limitations.

The prosecution for a Class A felony may be commenced at any time. Ind. Code § 35-

41-4-2(c). For a Class C felony, the prosecution must be commenced within five years after the commission of the offense. I.C. § 35-41-4-2(a)(1). Evidence was presented that Garcia began inappropriately touching K.P. when she was seven years old and that the last incident occurred when she was eight. C.G. testified that Garcia only molested him on one occasion, which was a few days before he told his teacher about it in February of 2006. This evidence is sufficient to show that the offenses occurred within the statutory limitations.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.